IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

CHAMBER SUMMONS NO.920 OF 2004
IN
SUIT NO.3243 OF 2003

The Administrator of the Specified
Undertaking of the Unit Trust of India ..Plff
vs.
Mr. P.S. Subramanayam ....Defendants

Mr.S.A. Shukla i/b. Shukla and Shukla for the plaintiffs.
A. Khandhar for proposed defendant no.3.
Mr. H. Pandey with Mishra i/b. Khaitan and Co. for proposed defendant no.10.
A. Panicker for proposed defendant no.4.
Ajay Thomes i/b. Mr. Subramanian for defendant no.1.

CORAM: S.U. KAMDAR, J.

DATE : 12TH APRIL, 2005.

P.C. :

1. The present chamber summons has been taken out by the plaintiff for amending the plaint and incorporate the amendment by adding three of the persons as defendants to the said suit. It is the case of the plaintiff who is the successor in title of an erstwhile entity Unit Trust of India that the respondents/proposed defendants to be added as a party and are liable for payment of diverse amounts and therefore they are entitled to join them as

party to the suit. The present chamber summons has been vehemently opposed by all the three proposed defendants.

2. The first main contention of all the proposed defendants that the present chamber summons is not directed against them and therefore the present chamber summons ought not to be heard and that the same should be dismissed. The provisions of directing in the chamber summons under the format prescribed by the High Court Rules is merely to effect service of chamber summons on such a person against whom the order is proposed. The chamber summons is served on all the three proposed defendants who are appearing before me and have argued their case before me in the aforesaid circumstances I do not find any justification to discuss the chamber summons merely because the same is not directed against them.

3. The second contention that the claim now raised in the present chamber summons is barred by law of limitation. In view of the judgment of the apex

court in the case of **Raghu Thuilak John vs. S. Rayappan and Ors reported in (2001) 2 SCC 472 and Pankaja and Anr vs. Yellappa (Dead) by LRs (2004) 6 SCC 415** it is now well settled that the issue of limitation being a mixed question of law and facts must be decided at the hearing of the suit and therefore the said issue is expressly kept open.

4. The third contention advanced by the proposed defendants that there is a proceedings initiated and pending before the DRT being OA No.191 of 2003 in respect of the same claim. I have perused the proceedings of OA.No.191 of 2003. The proposed defendants are not party to the said proceedings. The application is not filed against them. Undoubtedly the defendant is respondent no.16 in the said proceedings. However the learned counsel for the plaintiff points out that no reliefs are sought as against respondent no.16 who is the defendant herein in O.A. no.193 of 2003 and therefore I find no substance in the contentions advanced by the learned counsel for the proposed defendants.

5. The next contention raised by the learned counsel for all the parties that there is no case on merits as against them. It is now well settled that it is not permissible to determine at the hearing of an amendment application that the plaintiff will succeed or not in respect of the claim sought to be added by way of amendment because the same has to be determined at the trial of the suit. The next contention advanced by the proposed defendants that the plaintiff is not empowered under s.7 of the UTI Act to file the present suit and thus itself is not maintainable. It has been contended that the administrator appointed under s.7 of the said act is for a limited authority as contemplated therein and therefore the present chamber summons is not maintainable.

7. In my opinion it is not possible to answer the issue of maintainability at the hearing of the amendment application. This issue should be determined at the trial of the suit. It is not possible therefore to dismiss the chamber summons on the ground that the suit is not maintainable stage.

In view thereof chamber summons made absolute. Amendment to be carried out within two weeks.

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